

S E C T. II.

Judge acting in feriate time ; or *extra territorium*.

1635. December 5. SUTOR against CRAMOND.

No 8.

A decree and precept of poinding were sustained, though pronounced in the Christmas vacation, because inferior judges used to sit frequently and administer justice in such times, wherefore the Lords thought it hard to annul their proceedings; but here this was sustained for purging of a spulzie, which is odious.

IN a spuilzie and ejection, the defender *alleging*, That the husband to this pursuer had renounced and over-given the land to the defender, whereupon he was entered to the land, and the pursuer, his relict, was ejected and put out of the room, and houses thereof, conform to the precept direct and execute by the sheriff-officer, which was proponed, and admitted to probation, to eleid the ejection; likeas the said disposition bore, that her said husband disposed the particular goods contained in the disposition, (and for spuilzie whereof he was convened,) to the said defender, for satisfaction of the farms and duties, owing by him to the excipient, his master, according to a preceding tack, set to him by the defender, the which tack-duty was resting unpaid divers years, as the said disposition proports; likeas the defender also poinded the said goods by the sheriff-officer, according to the execution made upon the sheriff's precept direct thereanent; which exceptions being admitted, to purge the ejection and spuilzie, at the advising of the cause, the pursuer *alleging*, That the same could not be found proven, because the disposition made by the pursuer's husband, adduced to prove the same, was null, being a matter of 400 or 500 merks, and was only subscribed by one notary, which, in a matter of so great importance, against the act of Parliament, cannot be sustained; and also *alleged*, That the sheriff's precept of poinding was not a warrant to poind and to purge the spuilzie, except both the sheriff's decret, whereupon it was direct, had been also produced; neither were these sufficient, although the same had been produced, to give a warrant to poind, except the letters had been granted and directed by the Lords upon that sentence, to proceed to poind, without which the inferior judge could not execute his precept of poinding; attour he *alleged*, That both the sentence given by the sheriff, if any there was, whereby the execution of the precept might be sustained; and also the precept and execution were all null, because the same was executed in the time of the Yule vacance, which is a feriat and close time, wherein all judgments should cease. All these objections and allegeances were repelled, and the writ sustained, and the exceptions found proven sufficiently thereby; for albeit the disposition had but the subscription of one notary only for the party, yet it was found good, being made for satisfying of the master's tack-duty, which was not alleged to be paid, and proponed to purge a spuilzie; neither was there found any necessity to have any warrant of the Lords' letters, to precede the execution of the sheriff's precepts of poinding;

and also the decret and precept of poinding were sustained, albeit they were done in the Yule vacance; for the precept was dated 26th December, and the same bore the decret to be dated 24th December; in respect inferior judges used to sit frequently, and minister justice in these times; and it were hard to infringe and annul all their proceedings done in these times; and this was considered, that it tended to purge a spuilzie, which is odious.

No 8.

Act. Johnston.

Alt. Craig.

Clerk, Scot.

Fol. Dic. v. 1. p. 202. Durie, p. 784.

1730. July. BLAIR *against* INCORPORATION of MARY'S CHAPEL.

No 9.

In a competition of creditors, an objection was laid against a decree of furthcoming, that it was pronounced by the Magistrates of Edinburgh against inhabitants of the Canongate, over whom they had no jurisdiction. — THE LORDS were of opinion, That the Bailies of Edinburgh had no jurisdiction over the inhabitants of the Canongate; yet they sustained the decret upon use and wont, the Bailies having been in the constant custom of exercising such a jurisdiction; but they concerted an act of sederunt, discharging such jurisdiction in time coming. See APPENDIX.

Fol. Dic. v. 1. p. 202.

1736. February 17. JOHN LEGGAT *against* ANN and RACHEL DENOONS.

No 10.

In the question betwixt these parties, the LORDS found a decret of furthcoming, obtained before the Bailies of Edinburgh, sitting in Edinburgh, against one of the inhabitants of the Canongate, not subject to their jurisdiction, null; and repelled the *answer*, That, by constant and immemorial usage, the inhabitants of the Canongate were convened before the Bailies of Edinburgh.

Fol. Dic. v. 1. p. 202. C. Home, No 15. p. 36.

* * Lord Kames reports the same case :

A DECREET recovered before the Magistrates of Edinburgh against an inhabitant of the Canongate, held as confest upon a citation *pro confesso*, was, after his decease, found intrinsically null, the defender not having been subject to the jurisdiction; and one cannot be considered as contumacious in not answering to a citation before an incompetent judge; *extra territorium jus dicenti impune non paretur*; and the LORDS did not regard the *communis error*, and constant consuetude of the Magistrates of Edinburgh, exercising a jurisdiction over the inhabitants of the Canongate, which might be sufficient to support di-